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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,558	04/16/2004	Vladimir Lifshits	002139-013510US	2112
20350 7590 09/10/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER CHUO, TONY SHENG HSIANG	
			ART UNIT 1745	PAPER NUMBER
			MAIL DATE 09/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/826,558	Applicant(s) LIFSHITS, VLADIMIR	
	Examiner Tony Chuo	Art Unit 1745	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-11.
 Claim(s) withdrawn from consideration: 13-19.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see next page.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Response to Arguments

1. The applicant argues that Ballantine lacks any disclosure concerning heating the fuel cell to maintain a minimum temperature because Ballantine is not concerned with heating the fuel cell and therefore, lacks any disclosure relevant thereto. The Ballantine reference discloses recovering heat from the exhaust "334" of the oxidizer "318" in heat exchanger "336", transferring heat from the heat exchanger to generate steam, and then using the steam to humidify the air stream "314" that is fed to the fuel cell stack. The examiner maintains the contention that when steam is combined with the air stream, the temperature of the air stream will increase. This heated air stream will provide some heat for heating the fuel cell. Therefore, the effluent from the oxidizer will be used to indirectly heat the fuel cell.
2. The applicant also argues that there is no suggestion anywhere in Ballantine to use the heat extracted from the oxidizer exhaust 334 for maintaining the required temperature of the fuel cell stack. This argument is not commensurate with the scope of the claims because the claims do not recite using the heat extracted from the oxidizer exhaust to maintain the required temperature of the fuel cell.
3. The applicant also argues that Haltiner also nowhere discloses or in any form suggests to flow the effluent from the oxidizer or catalytic converter to the fuel cell. The examiner disagrees. As shown in Figure 3 of Haltiner et al, the effluent "112" from the oxidizer "66" flows through the reformer "106" and heat exchangers "84" & "92", and then flows to the fuel cells "44" & "46".

Art Unit: 1745

4. The applicant also argues that Ballantine nor Haltiner discloses heating the effluent from the catalytic oxidizer before the effluent reaches the fuel cell. It is contended by the examiner that according to Haltiner et al, during normal operations, the temperature of the effluent is cooler than the temperature of the reformer "106". Therefore, the effluent is heated by the reformer before the effluent reaches the fuel cell.

TC


JONATHAN CREPEAU
PRIMARY EXAMINER